IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2074 OF 2005

ALONG WITH

WRIT PETITION NO.2075 OF 2005

ALONG WITH

WRIT PETITION NO.2076 OF 2005

ALONG WITH

WRIT PETITION NO.2077 OF 2005

ALONG WITH

WRIT PETITION NO.2078 OF 2005

Mrs.Parul Apoorva Dalia @
Ms.Parul Shah ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

.....

Mr.Ashok M.Saraogi for Petitioner.

Mr.Y.S.Shinde, A.P.P. for Respondent No.1.

Mr.Prakash Naik for Respondent No.2.

.....

CORAM: A.M.KHANWILKAR, J.

NOVEMBER 23, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Shinde, A.P.P. waives notice for Respondent No.1. Mr.Naik waives notice for Respondent No.2.

3. As short question is involved, Petitions are taken up for final disposal forthwith, by consent.

4. Although more than one relief is claimed in these Petitions, however, Counsel for the Petitioner has confined arguments to relief (c), which relates to order of proclamation issued against the Petitioner in case No.55/S/97 pending before the 24th Court at Borivli in relation to offence punishable under Section 120-B, 420 r/w 34 of the Indian Penal Code and 68 of the Companies Act.

5. The proclamation has been issued on 22nd July 2005 on the basis that inspite of issuance of warrant of arrest, the Petitioner could not be traced and was not available for the trial.

Petitioner, however, contends that the Petitioner had no notice of the criminal proceedings instituted against her. No summons was ever served on her till she was in India and after she had left India on the address where she is presently residing which address is now referred to in the order of proclamation. It is therefore contended that the order of proclamation was unwarranted and cannot be sustained because the same has been passed without following necessary procedure which ought to precede issuance of order of proclamation. To make good this argument, it is contended that the Petitioner was married on 18th February 1997 and after marriage, immediately left for United States of America on 12th March 1997 and since then, she is staying at the address which is referred to in the order of proclamation. However, at no point of time, any notice, summons or warrant was served on the Petitioner on that address.

6. Counsel for the Respondent No.2, however, contends that it can be safely assumed that the Petitioner had notice about the present proceedings because she is one of the director of the company

of which her brother is also a director and facing same prosecution. The brother of Petitioner resides at the address which is provided in the complaint against he name of accused No.5 Petitioner herein.

7. In my opinion, however, the fact that brother of Petitioner resides on the same address, cannot be the basis to assume that the Petitioner has been duly served with the proceedings as required by law. Indeed, it was open to the Respondent/complainant to serve the Petitioner on the changed address of the Petitioner which is now referred to in the order of proclamation. No steps in that behalf were taken. It is only while getting the order of proclamation issued, reference is given to the present address of the Petitioner at Simtan, U.S.A. Viewed in this perspective, there is substance in the argument that the order of proclamation has not been issued after following due process of law.

8. Be that as it may, that will not absolve the Petitioner to make appearance before the

concerned Trial Court in the proceedings, where she has been named as accused No.5. Now that the Petitioner has knowledge about the said proceedings and has taken the trouble of approaching this Court for setting aside the order of proclamation, in the interest of justice, the order of proclamation will be kept in abeyance for a period of five weeks to enable the Petitioner to personally appear before the concerned Magistrate within said period.

9. If the Petitioner fails to appear before the Magistrate and takes out appropriate application as may be advised, it will be open to the Trial Court to proceed as if the order of proclamation is revived by the order, which I am passing today.

10. After the Petitioner has made appearance before the concerned Magistrate, he would proceed to decide all derivative applications taken out by the Petitioner, in particular, with regard to prayer for bail on the same day on which she presents herself before the Trial Court. This arrangement is arrived at as the Petitioner has

assured through her Counsel that on reaching India, the Petitioner will stay back in India for around four weeks, so that, the trial of case in question will proceed on day-to-day basis within that period as only around five to six witnesses are to be examined, coupled with the fact that the case pertains to the year 1997.

11. The Trial Court shall proceed with the trial and finally dispose of the same, preferably within six weeks from the date when the Petitioner presents herself before the Trial Court. The Petitioner, through her Counsel assures that the Petitioner will not file any application for discharge, which would inevitably delay the proceedings because the Petitioner is keen to face the trial as early as possible, so that, she may return to her matrimonial home, subject to such orders to be passed by the Court.

12. Petitions disposed of on the above terms.

13. It is made clear that this order is not an expression of opinion on the merits of the case

pending before the Trial Court in any manner. The same will have to be decided in accordance with law.

A.M.KHANWILKAR, J.